

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HONORIO R. MALLARI,)	Case No. 12-2876-SC
)	
Plaintiff,)	<u>ORDER TO SHOW CAUSE</u>
)	
v.)	
)	
JP MORGAN CHASE BANK NATIONAL)	
ASSOCIATION, et al.,)	
)	
Defendants.)	
)	

I. INTRODUCTION

Plaintiff Honorio R. Mallari ("Plaintiff") is hereby ORDERED TO SHOW CAUSE why this case should not be dismissed for lack of subject-matter jurisdiction. For the reasons set forth below, the Court is doubtful that Plaintiff's Complaint, ECF No. 1 ("Compl."), supplies a basis for federal-question jurisdiction under 28 U.S.C. § 1331, or for diversity jurisdiction under 28 U.S.C. § 1332.

II. DISCUSSION

"[A] challenge to federal subject-matter jurisdiction cannot be waived and may be raised at any time." Local 159, 342, 343 & 444 v. Nor-Cal Plumbing, Inc., 185 F.3d 978, 981 n.3 (9th Cir. 1999). Federal courts may raise the issue of subject-matter jurisdiction on their own initiative. See Snell v. Cleveland, Inc., 316 F.3d 822, 826 (9th Cir. 2002). "If the court determines at any time that it lacks subject-matter jurisdiction, the court

1 must dismiss the action." Fed. R. Civ. P. 12(h)(3). The party
2 invoking the court's subject-matter jurisdiction -- here, Plaintiff
3 -- bears the burden of showing that it exists. See, e.g., Kokkonen
4 v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

5 On June 4, 2012, Plaintiff filed his Complaint in federal
6 court. ECF No. 1 ("Compl."). The Complaint asserts six claims:
7 (1) quiet title; (2) declaratory relief; (3) injunction; (4)
8 cancellation of instruments; (5) fraud; and (6) unjust enrichment.
9 In addition to setting forth Plaintiff's claims, the Complaint was
10 required to provide "a short and plain statement of the grounds for
11 the court's jurisdiction." Fed. R. Civ. P. 8(a)(1). The Court's
12 Civil Local Rules also require the Complaint to "include a separate
13 paragraph entitled 'Jurisdiction'" which "identif[ies] the
14 statutory or other basis for federal jurisdiction and the facts
15 supporting such jurisdiction." Civ. L.R. 3-5(a). As explained
16 below, Plaintiff, who is represented by counsel, has not fully
17 complied with these requirements. Consequently, the Court is
18 unable to conclude that it may exercise subject-matter jurisdiction
19 over this case.

20 Plaintiff suggests two possible statutory bases for subject-
21 matter jurisdiction: federal-question jurisdiction under § 1331 and
22 diversity jurisdiction under § 1332. As to federal-question
23 jurisdiction, Plaintiff suggests that it may be exercised pursuant
24 to 12 U.S.C. § 2601 et seq., the Real Estate Settlement Procedures
25 Act ("RESPA"). Compl. ¶ 4. Plaintiff is incorrect. The Complaint
26 asserts six state-law claims but no RESPA claim, and therefore the
27 face of the Complaint does not give rise to a federal question.
28 Plaintiff alludes to RESPA violations in his pleading, e.g., id. ¶

1 28, but by declining to assert a claim based on these purported
2 violations, Plaintiff has declined to make potential RESPA
3 violations a possible ground for federal-question jurisdiction.
4 See Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) ("The
5 [well-pleaded complaint] rule makes the plaintiff the master of the
6 claim; he or she may avoid federal jurisdiction by exclusive
7 reliance on state law.").

8 Plaintiff also suggests that the diversity statute, § 1332,
9 provides subject-matter jurisdiction in this case. Compl. ¶ 3.
10 However, his factual allegations do not support jurisdiction on
11 that ground, either. As a preliminary matter, the Court notes that
12 Plaintiff is required only "to allege (not to prove) diversity,"
13 Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001),
14 and that his allegations pertaining to jurisdiction, like his
15 allegations pertaining to liability, are entitled to the
16 presumption of truth, Harris v. Rand, 682 F.3d 846, 850-51 (9th
17 Cir. 2012). However, mere conclusory statements that the
18 jurisdictional requisites have been satisfied do not suffice. Fed.
19 R. Civ. P. 8(a)(1); cf. Gaus v. Miles, Inc., 980 F.2d 564, 567 (9th
20 Cir. 1992) (rejecting conclusory jurisdictional allegation). On
21 the contrary, "[a]bsent unusual circumstances, a party seeking to
22 invoke diversity jurisdiction should be able to allege
23 affirmatively the actual citizenship of the relevant parties."
24 Kanter, 265 F.3d at 857. In cases such as this one, where the
25 allegations are implausible or otherwise doubtful, the Court may
26 require the party asserting jurisdiction -- here, Plaintiff -- to
27 establish the jurisdictional facts by a preponderance of the
28 evidence. Harris, 682 F.3d at 851.

1 The Court looks first at the allegations pertaining to
2 Plaintiff's citizenship. Plaintiff alleges that he is a "resident"
3 of a California county and the owner of real property located
4 there. Compl. ¶ 5. Citizenship, however, is different from
5 "residency," and the diversity jurisdiction statute is concerned
6 only with the former. Kanter, 265 F.3d at 857. State citizenship
7 depends on both national citizenship and "domicile" within a state
8 (the latter being distinct from "residence"). Id. Consequently,
9 alleging "residency" in a state is insufficient to allege
10 citizenship. See id. And failure to allege citizenship is fatal
11 to the assertion of diversity jurisdiction. Id. at 857-58. In
12 short, Plaintiff has not established his California citizenship, as
13 that term is used in the context of diversity jurisdiction.

14 Turning to Defendants, each is a business entity. Plaintiff
15 alleges that Defendant JP Morgan Chase Bank, N.A. ("JP Morgan") "is
16 a nationally chartered bank." Compl. ¶ 6. But with respect to the
17 other three defendants, Plaintiff has failed to allege the form of
18 business entity or any other fact which could identify their state
19 citizenship. See id. ¶¶ 7-9. The Court is particularly troubled
20 by Plaintiff's failure to identify the citizenship of Defendant
21 California Reconveyance Company, whose name alone strongly suggests
22 California citizenship. Id. ¶ 7. This, combined with the
23 suggestion that Plaintiff may be a California citizen, gives the
24 Court reason to doubt that the jurisdictional requirement of
25 complete diversity of citizenship is satisfied in this case. See
26 Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-74 (1978);
27 Dolch v. United California Bank, 702 F.2d 178, 181 (9th Cir. 1983).
28 Plaintiff must allege the state citizenship of each defendant.

1 Assuming that Plaintiff means to allege his own California
2 citizenship, to establish diversity he must also allege which form
3 of business each Defendant is, as well as the relevant facts that
4 make that Defendant a citizen of a state other than California.

5
6 **III. CONCLUSION**

7 For the reasons set forth above, Plaintiff is hereby ORDERED
8 TO SHOW CAUSE why this case should not be dismissed for lack of
9 subject-matter jurisdiction.

10 No hearing shall be held in this matter. Plaintiff, as well
11 as any named Defendant, may submit a brief of not more than four
12 (4) pages, exclusive of supporting declarations or exhibits, in
13 support of or opposing the Court's exercise of subject-matter
14 jurisdiction in this case. Such briefs are due within ten (10)
15 calendar days of the signature date of this Order to Show Cause.
16 Defendants may submit a brief but are not required to do so. If
17 Plaintiff, however, does not timely submit a brief, the Court shall
18 dismiss this case for lack of subject-matter jurisdiction.
19 Plaintiff is reminded that his filings must be made through the
20 Court's electronic filing system, see Civ. L.R. 5-1(b), and must
21 otherwise comply with the Court's Civil Local Rules.

22
23 IT IS SO ORDERED.

24
25 Dated: September 20, 2012


UNITED STATES DISTRICT JUDGE